

§218.171

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(C) Target simulator (surface vessels, submarines, torpedoes, and UUV engine noise): Acoustic energy from engines usually from 50 Hz to 10 kHz at SLs less than 170 dB re 1 microPa @ 1 m—up to 24.5 hours per year.

(2) Increased Tempo and Activities due to Range Extension: Estimates of annual range activities and operations are listed in the following table, but may vary provided that the variation does not result in exceeding the amount of take indicated in §218.171(c):

Range activity	Platform/system used	Proposed number of activities/year ¹		
		Keyport range site	DBRC site	QUTR site
Test Vehicle Propulsion Other Testing Systems and Activities.	Thermal propulsion systems	5	130	30
	Electric/Chemical propulsion systems	55	140	30
	Submarine testing	0	45	15
	Inert mine detection, classification and localization.	5	20	10
	Non-Navy testing	5	5	5
	Acoustic & non-acoustic sensors (magnetic array, oxygen).	20	10	5
	Countermeasure test	5	50	5
	Impact testing	0	10	5
	Static in-water testing	10	10	6
	UUV test	45	120	40
Fleet Activities ² (excluding RDT&E).	Unmanned Aerial System (UAS) test	0	2	2
	Surface Ship activities	1	10	10
	Aircraft activities	0	10	10
	Submarine activities	0	30	30
Deployment Systems (RDT&E).	Diver activities	45	5	15
	Range support vessels:
	Surface launch craft	35	180	30
	Special purpose barges	25	75	0
	Fleet vessels ³	15	20	20
	Aircraft (rotary and fixed wing)	0	10	20
	Shore and pier	45	30	30

¹ There may be several activities in 1 day. These numbers provide an estimate of types of range activities over the year.

² Fleet activities in the NAVSEA NUWC Keyport Range Complex do not include the use of surface ship and submarine hull-mounted active sonars.

³ As previously noted, Fleet vessels can include very small craft such as SEAL Delivery Vehicles.

(d) Amended regulations are effective February 1, 2012, through April 11, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in §218.170(c) should the amounts (e.g., hours, number of exercises) vary from those estimated in §218.170(c), provided that the variation does not result in exceeding the amount of take indicated in §218.171(c).

[76 FR 20274, Apr. 12, 2011, as amended at 77 FR 4925, Feb. 1, 2012]

§218.171 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 218.176 of this chapter, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §218.170(b), provided the activity is in

compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §218.170(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §218.170(c) is limited to the following species, by Level B harassment only and the indicated number of times:

(1) Harbor porpoise (*Phocoena phocoena*)—56,415 (an average of 11,283 annually);

(2) Northern fur seal (*Callorhinus ursinus*)—220 (an average of 44 annually);

(3) California sea lion (*Zalophus californianus*)—570 (an average of 114 annually);

(4) Northern elephant seal (*Mirounga angustirostris*)—70 (an average of 14 annually);

(5) Harbor seal (*Phoca vitulina richardsi*) (Washington Inland Waters stock)—27,340 (an average of 5,468 annually); and

(6) Harbor seal (*P. v. richardsi*) (Oregon/Washington Coastal stock)—505 (an average of 101 annually).

§218.172 Prohibitions.

Notwithstanding takings contemplated in §218.171 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.176, no person in connection with the activities described in §218.170 may:

(a) Take any marine mammal not specified in §218.171(c);

(b) Take any marine mammal specified in §218.171(c) other than by incidental take as specified in §218.171 (c);

(c) Take a marine mammal specified in §218.171(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§218.173 Mitigation.

When conducting RDT&E activities identified in §218.170(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §216.106 of this chapter and §218.176 must be implemented. These mitigation measures include, but are not limited to:

(a) Marine mammal observers training:

(1) All range personnel shall be trained in marine mammal recognition.

(2) Marine mammal observer training shall be conducted by qualified organizations approved by NMFS.

(b) Lookouts onboard vessels:

(1) Vessels on a range shall use lookouts during all hours of range activities.

(2) Lookout duties include looking for marine mammals.

(3) All sightings of marine mammals shall be reported to the Range Officer in charge of overseeing the activity.

(c) Visual surveillance shall be conducted just prior to all in-water exercises.

(1) Surveillance shall include, as a minimum, monitoring from all participating surface craft and, where available, adjacent shore sites.

(2) When cetaceans have been sighted in the vicinity of the operation, all range participants increase vigilance and take reasonable and practicable actions to avoid collisions and activities that may result in close interaction of naval assets and marine mammals.

(3) Actions may include changing speed and/or direction, subject to environmental and other conditions (*e.g.*, safety, weather).

(d) An “exclusion zone” shall be established and surveillance will be conducted to ensure that there are no marine mammals within this exclusion zone prior to the commencement of each in-water exercise.

(1) For cetaceans, the exclusion zone shall extend out 1,000 yards (914.4 m) from the intended track of the test unit.

(2) For pinnipeds, the exclusion zone shall extend out 100 yards (91 m) from the intended track of the test unit.

(e) Range craft shall not approach within 100 yards (91 m) of marine mammals, to the extent practicable considering human and vessel safety priorities. This includes marine mammals “hauled-out” on islands, rocks, and other areas such as buoys.

(f) In the event of a collision between a Navy vessel and a marine mammal, NUWC Keyport activities shall notify immediately the Navy chain of Command, which shall notify NMFS immediately.

(g) Passive acoustic monitoring for cetaceans will be implemented throughout the NUWC Keyport Range Complex during RDT&E testing activities involving active sonar transmissions when passive acoustic monitoring capabilities are being operated during the testing activity.